

RECEIVED

OCT - 1 2001

DOCKET FILE COPY ORIGINAL  
BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Revision of the Commission's Rules to  
Ensure Compatibility with Enhanced  
911 Emergency Calling Systems

CC Docket 94-102

**AIRADIGM COMMUNICATIONS, INC.  
PETITION FOR PARTIAL WAIVER OF  
E-911 PHASE II IMPLEMENTATION MILESTONES**

Airadigm Communications, Inc. ("Airadigm"), hereby requests a partial waiver of the Commission's E-911 Phase II rules, 47 CFR § 20.18. Due to circumstances beyond its control, Airadigm has been prevented from implementing an E911 Phase II solution, and therefore seeks a partial waiver of the Commission's rules to permit it to adopt and implement a solution on the timeline outlined in this petition.

**I. BACKGROUND**

Airadigm Communications, Inc. is an Entrepreneurs' Block licensee in Wisconsin and Iowa, and currently provides service to over 30,000 individuals and small businesses. In July, 1999, facing mounting losses from operations, Airadigm sought bankruptcy protection under Chapter 11, and at that time ceased making payments to its pre-petition creditors –

No. of Copies rec'd at 4 Copies rec'd \_\_\_\_\_  
List A B C D E C D E

including the FCC – in accordance with the bankruptcy law.<sup>1</sup> In January, 2000, the FCC took the position that, notwithstanding the Bankruptcy Code, Airadigm’s spectrum licenses had “automatically cancelled” when it failed to make post-petition interest payments on its pre-petition debt to the FCC.

In February, 2000, Airadigm filed with the FCC a “Petition for Reinstatement” of its licenses.<sup>2</sup> Assuming (without conceding) that its licenses could and did cancel for non-payment of its pre-petition debt, Airadigm requested that the FCC reinstate those licenses, based upon the public interest. The FCC has not acted on that Petition.

About a year ago, Airadigm was able to confirm a plan of reorganization. That plan provides limited funding to allow Airadigm to continue operations pending resolution by the FCC of its Petition for Reinstatement. The plan also provides for its own final effectuation only upon action by the FCC on Airadigm’s Petition – a final decision on whether Airadigm’s licenses are cancelled or should be reinstated.

Three months ago, the U.S. Court of Appeals for the D.C. Circuit declared that FCC licenses do not cancel for non-payment of pre-petition debts to the FCC.<sup>3</sup> This would seemingly have resolved the matter. Yet in accordance with the Plan of Reorganization, Airadigm still needs FCC action: Until the FCC takes action on Airadigm’s Petition for Reinstatement, the Plan cannot be effectuated, and Airadigm in the meantime lacks access to

---

<sup>1</sup> See 11 U.S.C. § 362.

<sup>2</sup> See Public Notice, *Commission Seeks Comment on Airadigm Communications Inc.’s Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver*, DA 00-368 (Feb. 24, 2000).

<sup>3</sup> *NextWave Personal Communications Inc. v. FCC*, 254 F.3d 130 (D.C. Cir. 2001) (“section 525 prevents the Commission, whatever its motive, from canceling the licenses of winning bidders who fail to make timely installment payments while in Chapter 11”).

capital. Until the FCC acts, and the Plan is effectuated, Airadigm simply cannot undertake the type of capital improvements that will be necessary to achieve E911 Phase II compliance.

## **II. WAIVER IS APPROPRIATE UNDER THESE CIRCUMSTANCES.**

The Commission may waive any of its rules for good cause shown.<sup>4</sup> In the context of E-911 implementation, the Commission has recognized that “factors outside [a carrier’s] control” might prevent a carriers from timely implementing E-911 Phase II.<sup>5</sup> The Commission has indicated that where such circumstances prevent timely compliance, “individual waivers” may be appropriate.<sup>6</sup> This policy is in keeping with the Commission’s general practice: it has consistently recognized that “bringing a new product to market requires manufacturers to undertake a time-consuming series of complex steps.”<sup>7</sup> And therefore it has often waived compliance deadlines for its licensees when products cannot be made available in time.<sup>8</sup>

As set forth in more detail below, this is a case where circumstances beyond Airadigm’s control have conspired to prevent it from timely implementation of the Commission’s E911 Phase II mandate. The Commission should grant the requested waiver because Airadigm simply cannot implement Phase II any earlier. That is, “[i]n view of the unique . . . circumstances of the instant case, the applicant has no reasonable alternative.”<sup>9</sup>

---

<sup>4</sup> See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>5</sup> Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Calling Systems, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442 ¶ 45 (2000) (“*Fourth MO&O*”).

<sup>6</sup> *Id.* ¶ 43.

<sup>7</sup> GARMIN International, Inc. *Order on Reconsideration*, DA 01-851 ¶ 6 (2001).

<sup>8</sup> See, e.g., Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment, 9 FCC Rcd. 1981 ¶¶ 76-77 (1994) (compliant cable boxes not available from equipment makers).

<sup>9</sup> 47 C.F.R. § 1.927.

### **III. E-OTD IS THE ONLY REALISTIC SOLUTION FOR GSM CARRIERS.**

The consensus among all GSM providers is that Enhanced Observed Time Difference (“E-OTD”) is the only practicable technology to achieve compliance with Phase II of the Commission’s E911 mandate.<sup>10</sup> Indeed, the Commission itself has recognized this. Because GSM serves “only a small percentage of U.S. wireless subscribers,” the Commission has noted, “the development of ALI capabilities for use by GSM carriers has lagged behind that for carriers using other interfaces.”<sup>11</sup> Thus, no vendor has developed handsets with GPS capability, and there appears to be no viable network-based solution.<sup>12</sup> Therefore, E-OTD “may be the only method available to GSM carriers . . . for some time.”<sup>13</sup>

### **IV. AIRADIGM CANNOT IMPLEMENT E-OTD IN TIME**

While E-OTD is the only realistic solution available to GSM carriers, it is clear that no carrier will be able to achieve compliance in time to meet the Commission’s deadlines. Many carriers have petitioned for relief from the Phase II implementation milestones based on the fact that manufacturers have not yet provided the necessary equipment. Airadigm, too, could not implement Phase II until compliant equipment is available from manufacturers.

The Commission has recognized that even the largest and probably most well-funded GSM carrier in the United States could not achieve Phase II compliance for another two years, and it has waived its implementation deadline accordingly.<sup>14</sup> And indeed, as a smaller carrier Airadigm’s situation is worse than its larger rivals: it lacks any leverage with its

---

<sup>10</sup> See, e.g., Cingular Wireless LLC Petition for Limited Waiver of Sections 20.18(e)-(h), CC Dkt No. 94-102 at 16-19 (filed July 6, 2001).

<sup>11</sup> *Fourth MO&O* ¶ 56.

<sup>12</sup> See, e.g., *id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Fourth MO&O* ¶ 59.

equipment suppliers, and generally can depend on receiving any new equipment long after it is delivered to major carriers. There is no GSM solution available from vendors of network equipment, and it appears likely that no solution will be available in the near term. Because Airadigm would, like the other GSM carriers, be unable to implement E-OTD in time to meet the compliance deadlines, it therefore should receive a waiver based on these same circumstances upon which the Commission has previously waived its rules.<sup>15</sup>

However, Airadigm's situation is complicated by an additional and more fundamental problem. Even if a solution existed, Airadigm could not implement it today. And once a fully-compliance E-OTD solution becomes available, Airadigm may not be able to implement that solution immediately. To implement E-OTD will require major an fundamental hardware and software upgrades and additions to Airadigm's network architecture, just in order to update the network sufficiently to be compatible with the solution.

Since the time that the FCC took the position that Airadigm's licenses "automatically cancelled," Airadigm has not performed any upgrades to its network software and switching facilities. While the existing system is still functional, it cannot support E911 Phase II compliance. Airadigm currently operates using Ericsson's software Release 7, yet the first release compatible with E911 Phase II is Release 9. Fundamental upgrades will be necessary to achieve Phase II compliance, and those upgrades cannot be initiated until the FCC acts on Airadigm's Reinstatement Petition.

In order to upgrade its network to Phase II capability, Airadigm will first have to install R8: Ericsson's architecture does not allow carriers to leapfrog over releases. To accomplish this, it will first have to externalize its virtual private network ("VPN") service

---

<sup>15</sup> See, e.g. *WALT Radio*, 418 F.2d at 1159.

control point (“SCP”), as R8 disallows VPN processing within the switch. This will take four to six months. Then, Airadigm must migrate its entire VPN customer base – including businesses and governmental entities that have fully or partially replaced their landlines with Airadigm’s wireless phones – to the new external SCP. This will take another two months. After the VPN migration, Airadigm must upgrade its core processors – both the Mobile Switching Center (“MSC”) and the Base Station Controller (“BSC”). Each will take three months, but the MSC and BSC upgrades may be performed concurrently. Finally, after these network changes are made and the hardware upgrades are installed and fully operational, Airadigm must install and troubleshoot the R8 software – a process likely to take three months. Thus, the total time to complete Airadigm’s upgrade from R7 to R8 will be nine to eleven months.

Only after R8 is fully operational can Airadigm begin installing R9, and its E911 Phase II capability. First, Airadigm must install the new Mobile Positioning Center (“MPC”). This will take three to four months. At the same time that it is installing the MPC, Airadigm will engineer the locations for its Line Module Units (“LMUs”), the devices installed at base stations that are capable of detecting the handset signal time differences that form the basis for E-OTD technology. Because Airadigm’s network is largely rural, it will require more LMUs than would a network in an urban area. It is likely that two-thirds or more of Airadigm’s base stations will require LMUs for proper system functioning. This will take three months but may be conducted concurrently with installation of the MPC. After these steps are completed, the LMUs must be installed at the various base stations. This will take about three months. After that, Airadigm will install the R9 software (three months), and then perform integration, verification and testing (three months). In all, then, it will take 12 to 13 months to install R9 – for a total time to achieve E911 network readiness of 21 to 24 months.

Airadigm can do none of this until after its bankruptcy plan is effectuated. After, that is, the FCC acts on Airadigm's Reinstatement Petition. Once the FCC acts on the Reinstatement Petition, it will take at least three months to effectuate the bankruptcy plan, order the equipment, and begin the process of upgrading to R8 and then to R9. Airadigm cannot be in a position to achieve E911 Phase II compliance until a substantial time after the FCC acts on its Reinstatement Petition.

Airadigm has been diligent in its efforts to achieve FCC action on its Reinstatement Petition, and thereby to clear the path to E911 compliance. It has submitted numerous written pleadings and *ex parte* submissions, and has appeared in person before virtually every person at the Commission who might be in a position to help expedite action on the Petition. Yet, to the frustration of Airadigm and its counsel, it has been unable to achieve FCC action, and therefore cannot effectuate its Bankruptcy Plan and begin implementing the upgrades necessary to E911 Phase II compliance.

The fact remains that no GSM solution is available, and none will be available in time to meet the Commission's implementation milestones. The Commission has recognized this, and has granted waivers accordingly. Additionally, Airadigm finds itself in an unusual position: because the pendency of its Reinstatement Petition prevents the effectuation of its Plan of Reorganization, it could not implement a solution even were it available.

## **V. CONCLUSION**

Because circumstances beyond its control prevent its from implementing Phase II any sooner, Airadigm has no "has no reasonable alternative."<sup>16</sup> Airadigm therefore respectfully requests that the Commission grant a partial waiver of Section 20.18 of its rules, allowing

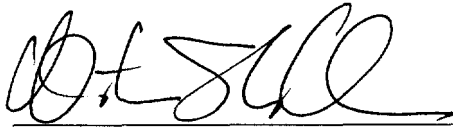
---

<sup>16</sup> See 47 C.F.R. § 1.927.

Airadigm until 27 months after the FCC takes dispositive action on its Petition for Reinstatement to implement E911 Phase II.

Respectfully Submitted,

**AIRADIGM COMMUNICATIONS, INC.**

By: 

James F. Rogers  
William S. Carnell  
LATHAM & WATKINS  
555 Eleventh Street, N.W.  
Suite 1000  
Washington, D.C. 20004  
(202) 637-2200

**Its attorneys**

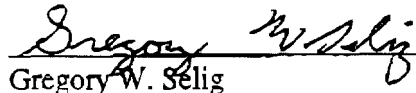
October 1, 2001



**DECLARATION OF GREGORY W. SELIG**

I, Gregory W. Selig, am Director of Operations and Engineering and am the acting Chief Technical Officer of Airadigm Communications, Inc. I have reviewed the foregoing Petition for Partial Waiver of E-911 Phase II Implementation Milestones, and I declare under penalty of perjury that to the best of my knowledge, information and belief the facts contained therein are true and correct.

Executed in Little Chute Wisconsin on this the first day of October, 2001.

A handwritten signature in cursive script, reading "Gregory W. Selig", is written over a horizontal line.

Gregory W. Selig  
Director of Operations and Engineering  
Acting Chief Technical Officer  
Airadigm Communications, Inc.